

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

V.

CIVIL ACTION NO. 3:16CV34CWR-FKB

**THIRD COAST TOWING, LLC,
GREAT AMERICAN INSURANCE,
AND NATURE’S WAY MARINE, LLC**

DEFENDANTS

AND

**NATURE’S WAY MARINE, LLC AND
ENVIRONMENTAL POLLUTION GROUP, LLC**

COUNTER-PLAINTIFFS

V.

**UNITED STATES OF AMERICA,
UNITED STATES COAST GUARD,
NATIONAL POLLUTION FUNDS CENTER
AND OIL SPILL LIABILITY TRUST FUND**

COUNTER-DEFENDANTS

AND

NATURE’S WAY MARINE, LLC

CROSS-CLAIMANT

V.

THIRD COAST TOWING, LLC

CROSS-DEFENDANT

AND

GREAT AMERICAN INSURANCE COMPANY

CROSS-CLAIMANT

V.

THIRD COAST TOWING, LLC

CROSS-DEFENDANT

AND

GREAT AMERICAN INSURANCE COMPANY

THIRD PARTY PLAINTIFF

V.

**AMERICAN STEAMSHIP OWNERS MUTUAL
PROTECTION & INDEMNITY ASSOCIATION, INC.
(THE AMERICAN CLUB)**

THIRD PARTY DEFENDANT

AND

THIRD COAST TOWING, LLC

CROSS-CLAIMANT

V.

NATURE’S WAY MARINE, LLC

CROSS-DEFENDANT

**NATURE’S WAY MARINE, LLC AND
ENVIRONMENTAL POLLUTION GROUP, LLC’S MOTION TO STAY
PROCEEDINGS PENDING RULING ON MOTION TO TRANSFER**

Nature’s Way Marine, LLC (“Nature’s Way”) and Environmental Pollution Group, LLC (“EPG”) respectfully move this Court to stay all further proceedings in this matter pending this Court’s ruling on Nature’s Way and EPG’s Motion to Transfer [doc. 39] as follows:

1. This action, filed on January 22, 2016, involves the circumstances of an allision that occurred on January 27, 2013, at the Mississippi River Bridge at Vicksburg, Mississippi and issues relating to oil spill clean-up and removal costs incurred as a result of that allision.
2. The issues in this action substantially overlap with the issues in two previously filed consolidated actions pending in the United States District Court for the Eastern District of Louisiana under Civil Action No. 2:15-cv-1743.
3. Nature’s Way and EPG have filed with this Court a Motion to Transfer this matter to the Eastern District of Louisiana under the first-filed rule in order to promote judicial economy and avoid duplication of effort by the parties and the Court.
4. Nature’s Way and EPG are seeking a stay of all further proceedings in this second-filed action pending this Court’s ruling on the Motion to Transfer. This stay will effectuate and preserve the policy of the first-filed rule until this Court can rule on the first step of the first-filed rule.

5. The first-filed rule is a two-step process. The second-filed court must first determine if the issues in the cases *might* substantially overlap. “Once the second-filed court finds that the issues in the two suits **might substantially** overlap, ‘the proper course of action [is] for the court to transfer the case to the [first-filed] court to determine which case should, in the interests of sound judicial administration and judicial economy, proceed.’” *Miss. Higher Edu. Assistance Corp. v. Pa. Higher Educ. Assistance Agency*, 2012 U.S. Dist. LEXIS 92708, at *7, 2012 WL 2608808 (S.D. Miss. July 5, 2012) (quoting *Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 603 (5th Cir. 1999)) (emphasis in *Miss. Higher Edu. Assistance Corp.*).

6. This Court should stay all further proceedings in this matter until this Court determines whether the issues in this second-filed action and the first-filed Louisiana actions might substantially overlap. This will allow the Court in the first-filed Louisiana actions to make the final decisions on transfer as the second step of the first-filed rule.

7. A stay will not prejudice the parties to this action and will effectuate the principles of comity and sound judicial administration underlying the first-filed rule.

8. Due to the nature of this Motion, Nature’s Way and EPG request that the requirement to file a separate memorandum brief be waived.

WHEREFORE, Nature’s Way and EPG respectfully request that this Court stay all proceedings in this matter until such time as this Court rules on the previously filed Motion to Transfer.

Respectfully submitted, this 2nd day of September 2016.

NATURE'S WAY MARINE, LLC
and ENVIRONMENTAL POLLUTION
GROUP, LLC

By Their Attorneys,
JONES WALKER LLP

By: /s/ Neville H. Boschert
Neville H. Boschert

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing pleading upon counsel of record by filing in this Court's CM/ECF system.

This 2nd day of September 2016.

/s/ Neville H. Boschert
Neville H. Boschert